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In re Application of

Winter, et al.

OFFICE OF PETITIONS

Application No. 10/532,565

Filed: April 22, 2005

Attorney Docket No. 2002DE141

DECISION ON PETITION

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181(a), filed October 3, 2008.

The petition is **granted**.

This application was held abandoned December 29, 2007, after no reply was received to the Notice of Non-Compliant Amendment mailed December 6, 2007. A final Office action was mailed September 28, 2007, to which applicant filed a response on November 27, 2007. By the notice mailed December 6, 2007, applicant was informed that the amendment filed November 27, 2007, was not proper. No new period for response was set by the Notice of Non-Compliant Amendment; therefore, the application became abandoned on December 29, 2007. A Notice of Abandonment was mailed on August 18, 2008.

Section 711.03(c)(II) of the *Manual of Patent Examining Procedure* ("MPEP") provides that in order to establish non-receipt of an Office action so as to prove that the imposition of a holding of abandonment is improper, petitioner must: 1) provide a statement to the Office indicating that the Office action was not received by petitioner; 2) include in the statement an attestation to the fact that a review of the file jacket and docket records maintained by petitioner indicates that the Office action was not received; and 3) provide a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed.

Petitioner has met the burden of proof as established by Section 711.03(c)(II) of the MPEP. The holding of abandonment is, therefore, withdrawn.

The application file is being forwarded to Technology Center 1700, GAU 1793 for further processing including review of the amendment filed October 3, 2007, which is intended to be responsive to the Notice of Non-Compliant Amendment mailed December 6, 2007.

Questions concerning this decision should be directed to the undersigned at (571) 272-3222.

A handwritten signature in black ink, appearing to read "K.A. McLaughlin", written in a cursive style.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions